



IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

M.P.NO. 504 OF 1994

PETITIONER

Ramdayal S/o Manbodhi Dhobi aged about 55 years, occupation cultivation resident of Village Kapisda tahsil Sarangarh district Raigarh (MP).

Versus

RESPONDENTS

1. State of Madhya Pradesh, Through Collector Raigarh (MP)
2. Mukundram S/o Ramratan Aghariya aged about 50 years . occupation cultivation, r/o Kapisda , tahsil Sarangarh, district Raigarh.
3. Nandau S/o Ram Ratan Aghariya aged about 35 years, occupation cultivation, r/o Kapisda, tahsil Sarangarh, district Raigarh .
4. Digamber S/o Ram Ratan Aghariya aged about 38 years, occupation cultivation, r/o Kapisda tahsil Sarangarh, district Raigarh.
5. District Judge, Raigarh.

PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA

3165
Filed on 14/12/94
by Shri. Per. Ghant
Advocate
R. to D.R.
Dh. 14/12
Cen. Sec. of Petition
with Annexure
RK Sharma
14/12/94
Chk to Dy.



आदेश पत्रक

मामला क्रमांक

W.P.No. 504/94

सन् 200

विरुद्ध

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	28-7-2005 Shri B.D. Guru, counsel for the petitioner. Shri Yashwant Singh Thakur, Govt. Advocate for the State/ respondent No.1. Heard both the counsel. The petitioner has preferred this writ petition under Article 227 of the Constitution of India questioning the legality, propriety and correctness of the order dated 30th September 1993 passed by the learned District Judge, Raigarh in civil revision No.68/93 whereby the learned District Judge while allowing the revision set aside the order of the Civil Judge, class-2, Saranggarh dated 17-4-93 and held that in view of the bar created under Section 9 of the Chhattisgarh Samaj Ke Kamjor Vargon Ke Krishi Bhumi-Dharakon Ka Udhar Dene Walon Ke Bhumi Hadapane Sambandhi Kuchakron Se Paritran Tatha Mukti Adhiniyam, 1976 (hereinafter referred to as the 'Adhiniyam, 1976') the suit filed by the petitioner is not maintainable. Brief facts, as set out in the petition, leading to filing of this writ petition are that the petitioner herein was Bhoomiswami of agricultural land of village Kapisda and he was granted Bhoomiswami right in respect of the land in Revenue case No.107-A/19 of 1961-62. As the petitioner was facing financial problems in the year 1972, therefore, he contacted respondent No.2, Mukundram for	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
		advancement of loan and the said respondent agreed to advance the loan of Rs.700/- only on the condition that the petitioner should execute a nominal sale deed as a security for the said loan. The petitioner agreed to execute the sale deed as he was in dire need of money. But, instead of executing a deed of mortgage, respondent No.1 took advantage of the petitioner's illiteracy and got executed a sale deed on 21-2-1972 showing the respondents No.1 to 3 as purchaser of about 1 acre of land from the petitioner for consideration of Rs.2,000/-. In the year 1979, the petitioner and respondents No.2 to 4 agreed that the petitioner would allow them to cultivate the land for 3 years against full and final satisfaction of the loan amount and thereafter a return sale deed will be executed in favour of the petitioner, as a result of which the petitioner allowed them to cultivate the land till 1981-82. Thereafter, the petitioner approached the said respondents to execute the sale deed in his favour, but they refused, as a result of which the petitioner moved an application under Section 5 of the Adhinyam, 1976. The said application was rejected by the S.D.O. after conducting the enquiry against which the petitioner moved an appeal before the Collector and the Collector remanded the case back to the S.D.O.. However, S.D.O. again rejected the application of the petitioner vide order dated 30-6-90.

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Being dissatisfied with the finding, the petitioner herein preferred a civil suit for cancellation of the sale deed before the learned Civil Judge, Class-2, Sarangarh in which objection was raised by respondents No.2 to 4 herein in their written statement and preliminary issue was framed about the maintainability of the civil Suit on account of bar created under Section 9 of the Adhinyam, 1976. Learned Civil Judge decided the issue in favour of the petitioner holding that the bar created under Section 9 of the Adhinyam, 1976 is not applicable as the application of the petitioner was rejected and the benefit of Section 4 was not granted to the petitioner. Being dissatisfied with the order, respondents No.2 to 4 preferred a civil revision before the District Judge, Raigarh who in turn passed the impugned order. I have heard Shri B.D. Guru, learned counsel for the petitioner and Shri Yashwant Singh Thakur, learned Govt. Advocate for the State/respondent No.1. Shri Prashant Jaiswal, Sr. Advocate with Shri Ali Asgar, Advocate moved an application for allowing them to represent on behalf of respondents No.2 to 4 and the same was allowed on 17-3-2005. But, neither Shri Jaiswal, nor his junior are present. Even on 5-7-2005 they failed to appear and today also they are not present.	

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	Therefore, arguments of learned counsel for the petitioner and learned Govt. Advocate for the State/respondent No.1 heard. I have perused the record and the provisions of Section 9 of the Adhiniyam, 1976 the interpretation of which is required in this case. The Adhiniyam, 1976 was enacted with the objective to better economic condition of holders of agricultural land in the weaker sections of the people by providing further relief from agricultural indebtedness by nullifying the land grabbing designs resorted to in many a form by lenders of money while and after extending credit to them and matters connected therewith. Prohibited transaction of loan has been defined under Section 2 (f) of the Adhiniyam, 1976 which envisages that 'prohibited transaction of loan means a transaction in which a lender of money advances loan to a holder of agricultural land against security of his interest in land, whether at the time of advancing the loan or at any time thereafter during the currency of the loan in any of the following modes namely:- (i) agreement to sell land with or without delivery of possession; (ii) outright sale of land with or without delivery of possession accompanied by separate agreement to re-sell it;	

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	(iii) outright sale of land with or without delivery of possession with a distinct oral understanding that the sale shall not be acted upon if the loan is re-paid; (iv) outright sale of land with or without delivery of possession with a condition incorporated in the sale deed to re-sell it on re-payment of the loan; (v) transaction in any modes other than those specified in clauses (i) to (iv) affecting interest in land including a fraudulent transaction or a transaction designed to defeat the provisions of any law regulating money lending or interest, for the time being in force. Section 4 of the Adhiniyam, 1976 envisages that 'it is hereby declared that all claims in relation to a prohibited transaction of loan subsisting on the appointed day or entered into thereafter but on or before the date of publication of this Act in the Gazette shall, notwithstanding anything contained in the Code or any other enactment for the time being in force or any decree or order, if any, of any court or authority be subject to protection and relief in accordance with the provisions of this Act.' Under Section 5 the holder of agricultural land has been given right to move the S.D.O. of area for action under the Adhiniyam, 1976. Section 6 of the Adhiniyam, 1976 speaks about the enquiry to be conducted by the S.D.O. and to arrive at a decision whether the transaction in question comes under the definition of prohibited transaction or not.	

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित - 6 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	Section 7 lays down that if the Sub-Divisional Officer reaches to the conclusion that the transaction in question comes under the prohibited transaction of loan, then he can restore the possession of land or any other relief to the applicant. Section 8 deals with the appeal and Section 9 deals with finality of order which envisages that 'Save as otherwise expressly provided in this Act every order made by the Collector in appeal or of a Sub-Divisional Officer, shall, if no appeal is filed, be final and shall not be called in question, in any court, tribunal or authority by way of an appeal or revision or in any original suit, application or execution proceedings.' Bare reading of the above provisions goes to show that the bar created under Section 9 of the Adhiniyam, 1976 is attracted only when the Sub-Divisional Officer after enquiry reaches to the conclusion that the transaction in question is prohibited transaction as defined under Section 2(f) of the Adhiniyam, 1976 and finality to that order has been attached by section 9 that such enquiry cannot be called in question before the tribunal or civil court. But, when the S.D.O. reaches to the conclusion that the provisions of Adhiniyam, 1976 are not attracted and the transaction in question is not prohibited transaction and the petitioner being dissatisfied with that finding, called in question the said transaction in the ordinary civil court on the ground alleged by him, then the provisions of Section 9 of the Adhiniyam, 1976 are not attracted because a person who has	(पाठ दीजिये)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	moved an application before the S.D.O. under the Adhiniyam, 1976, and the S.D.O. reaches to the conclusion that the provisions of Adhiniyam, 1976 are not attracted, in that case, the said person is entitled to avail his right available under the common civil law. The Legislature enacted the provision of Section 9 to protect the action under Section 7 of the Act. This special Act was enacted just to protect the interest of weak persons who were not able to protect their rights under the ordinary civil law from the land-grabbers, mighty/powerful persons and that is why a special procedure has been provided in the Act to deal with prohibited transaction. In the present case, the S.D.O. has not passed any order under Section 7, as such being dissatisfied with the fact that S.D.O is not taking any action under the Adhiniyam, 1976, the petitioner has filed the civil suit for cancellation of the sale deed, therefore, bar created under Section 9 of the Adhiniyam, 1976, was not attracted in this case. Therefore, finding of the learned District Judge allowing the revision by the impugned order is perverse and the same is not in consonance with the provisions of Section 9 of the Adhiniyam, 1976 and the said finding suffers from the illegality, therefore, it is liable to be set aside. In the result, the writ petition is allowed and the impugned order passed by the District Judge in civil revision No.68/93 is set	

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Barve	aside. Learned Civil Judge, Saranggarh, is directed to proceed with the civil suit in accordance with law. Parties are entitled for certified copy of this order.	Sd/- L.C.BHADOO Judge

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25/8/04
15/8/04
3/11/09
15/9/14